

HOUSE BILL REPORT

HB 2623

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to protecting agricultural workers who are recruited, solicited, employed, supplied, transported, or hired by farm labor contractors.

Brief Description: Protecting agricultural workers.

Sponsors: Representatives Kenney, Conway, Ormsby, Wood, Hudgins, McCoy, Hasegawa, Sells, Hunt, Upthegrove, Clibborn, Simpson, Dickerson and Santos.

Brief History:

Committee Activity:

Commerce & Labor: 1/23/06, 2/1/06 [DP].

Brief Summary of Bill

- Modifies the state farm labor contractor law, including provisions on licensing, bonding, contractor duties, nondiscrimination, and transportation safety.
- Makes the state employment agency law applicable to farm labor contractors.
- Modifies state laws governing public disclosure of certain federal H-2A visa program records.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member and Holmquist.

Staff: Jill Reinmuth (786-7134).

Background:

State laws provide for the regulation of farm labor contractors and employment agencies, as well as disclosure of public records.

I. Farm Labor Contractors

Farm labor contractors must be licensed by the Department of Labor and Industries (L&I). The definition of "farm labor contractor" is a person who, for a fee, recruits, solicits, employs, supplies, transports, or hires agricultural employees.

To obtain a farm labor contractor license for one or two years, an applicant must: submit a license application; pay a license fee; provide proof of liability insurance; file a surety bond or other security of at least \$5,000; disclose whether the applicant's license has ever been suspended, revoked or denied; and disclose whether the applicant has outstanding judgments in state or federal court. In addition, the Director of L&I must be satisfied as to the applicant's "character, competency, and responsibility." The Director may not issue a license to an applicant who sells intoxicating liquor where the applicant operates as a contractor, or whose license has been revoked in the past three years.

To renew both a one-year and a two-year farm labor contractor license, the contractor must pay the license fee and provide proof of a renewed surety bond. To renew a two-year license, the contractor must also file a written application disclosing certain information required in the original application.

To revoke, suspend, or refuse to issue or renew a license, the Director of L&I must determine that the farm labor contractor: violated the state farm labor contractor law or other state laws regulating agricultural employment; made misrepresentations or false statements in its application; induced agricultural employees to violate existing employment contracts; or has unsatisfied judgments in state or federal court.

Any person may protest the grant or renewal of a license.

Farm labor contractors must give agricultural employees information about their compensation and conditions of employment, as well as other work-related information. Contractors must also keep employment records.

Farm labor contractors and agricultural employers are prohibited from discriminating against agricultural employees for pursuing their rights under the state farm labor contractor law.

Persons injured by violations of the state farm labor contractor law may bring a suit in court for damages.

II. Employment Agencies

Employment agencies must be licensed by the Department of Licensing, and must comply with certain requirements covering: the form and substance of contracts with customers; fees that may be charged for services; disclosure to customers of information about the agency; and customer's complaint procedures. An agency that operates without a license may be sued by its customers for amounts paid to the agency. A court may award the customer, as damages in a lawsuit, three times the amount paid and any attorney's fees and costs.

"Farm labor contractors" are expressly excluded from the definition of "employment agency." Therefore, they are not subject to the licensing and regulatory requirements and the penalty provisions applicable to employment agencies.

III. Public Records

Information and records concerning individuals or employers obtained by the Employment Security Department (Department) are private and confidential, including records in the Department's possession under the federal H-2A visa program.

IV. Federal Transportation Safety Standards

Federal transportation safety standards applicable to agricultural employees require that: vehicles comply with federal vehicle safety standards; drivers have valid motor vehicle operator's licenses; and vehicles are insured against liability for damages to persons or property. Although these standards apply to the transportation of most agricultural employees, they do not apply to: transportation on certain machinery or equipment while an agricultural employee is planting, cultivating or harvesting agricultural commodities or caring for livestock and poultry; transportation with immediate family members; transportation of H-2A workers; and certain car pools.

V. Federal H-2A Visa Program

The federal H-2A visa program allows agricultural employers to obtain visas for temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature. Before being approved to participate in the program, agricultural employers must obtain a certification from the federal Department of Labor (DOL) that a labor shortage exists and that bringing in foreign workers will not adversely affect the wages and working conditions of domestic workers. The DOL's certification is based, in part, on the Department's certification that there is a shortage of agricultural laborers in the area.

Summary of Bill:

State laws providing for the regulation of farm labor contractors and employment agencies, as well as the disclosure of public records, are changed.

I. Farm Labor Contractors

The definition of "farm labor contractor" specifies that contractors subject to state law include those who perform farm labor contractor activities in Washington as well as those who perform such activities for employers in Washington.

The requirements for obtaining a one-year farm labor contractor license include executing a written application for each year, rather than only the first year, that the applicant seeks to operate as a contractor. (Two-year licenses are eliminated.) The applicant also must demonstrate full compliance with the state farm labor contractor law and other federal and state laws, and disclose whether the applicant has debts or outstanding judgments from administrative or judicial determinations in any state or country. Finally, if the applicant is participating in the federal H-2A visa program, the applicant must file a repatriation bond.

The grounds on which the Director of L&I must deny an application include: misrepresentations or false statements in the application; debts or outstanding judgments from administrative or judicial determinations in any state or country; repeated violations of laws or agreements related to farm labor contractor activities; violations of the state farm labor contractor law in the prior calendar year; or an unsatisfactory character, competency, or responsibility.

The circumstances in which the Director may immediately revoke or suspend a license include: debts or outstanding judgments from administrative or judicial determinations in any state or country; violations of laws or agreements related to farm labor contractor activities; an unsatisfactory character, competency, or responsibility; and violations of working arrangements with agricultural workers. The Director also may immediately revoke or suspend a license if there is a danger to the public health, safety, or welfare from the contractor's continued operations. The Director may permit a contractor to continue operating to complete contracts where workers have commenced work, so long as the Director monitors the operations during that time.

Any person may protest any action or inaction by the Director with respect to the issuance, renewal, revocation, or suspension of a farm labor contractor license.

The surety bond insures payment of sums owed to agricultural workers in the event of license revocation as well as compliance with the state farm labor contractor law. It is conditioned on payment of damages awarded in civil action as well as sums owed to workers under contract.

The repatriation bond is required if the farm labor contractor is participating in the federal H-2A visa program. It covers travel expenses for H-2A workers returning to their home in their country of origin, and their room, board, and other living expenses while awaiting repatriation, and is conditioned on timely repatriation of such workers. The Director specifies the amount of the repatriation bond.

The duties of farm labor contractors include complying with all agreements, working arrangements, and contracts entered into between contractors and third persons.

Farm labor contractors, agricultural employers, and agricultural workers may not exempt themselves from the burdens or waive the benefits of the state farm labor contractor law, and any agreement or rule that does so is void. This prohibition must be described in the information that contractors must give to workers.

The persons who are prohibited from discriminating against agricultural workers for pursuing their rights under the state farm labor contractor law include agents and other persons working on behalf of contractors and agricultural employers. The actions which are prohibited specifically include intimidating, threatening, restraining, coercing, and blacklisting workers. A rebuttable presumption of a violation exists if the contractor took the prohibited action against the worker within 90 days of when the worker, or a government agency acting on the workers's behalf, engaged in the protected conduct.

The Director of L&I is required to adopt transportation safety standards that are at least as effective as federal safety standards. Farm labor contractors, when using vehicles to transport agricultural workers, must ensure that vehicles conform to safety standards and that drivers have appropriate licenses. They also must have insurance or bonds that insure the contractor against liability for damages to persons or property. The safety standards do not apply to the transportation of workers on tractors and similar equipment while engaged in planting, cultivating, or harvesting commodities or while caring for livestock or poultry.

II. Employment Agencies

The definition of "employment agency" expressly includes, rather than excludes, farm labor contractors. Such contractors, therefore, are subject to the licensing and regulatory requirements and the penalty provisions applicable to employment agencies.

If requests for refunds of employment agency fees involving farm labor contractors are in dispute, the Director of DOL may hold a hearing in accordance with the Administrative Procedures Act, determine whether a refund is proper, and order the contractor to make the refund within 30 days. The state or a worker also may bring an action for the refund in court.

III. Public Records

Certain records in the Employment Security Department's possession under the federal H-2A visa program are not private and confidential, provided that the names and other private information of specific workers are redacted. These records include: applications for H-2A certification; correspondence related to H-2A applications; documents regarding housing inspections and employer-provided transportation; and job orders listed in response to H-2A applications. Timelines for responding to requests for these records are established.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Washington's agricultural sector is a critical component of our state's economy. Part of ensuring its success means having a sufficient labor supply, and making sure Washington is a good state in which to work. This bill helps achieve these objectives. It will help by giving authority to the Director of the L&I to curb abuses, protect domestic and foreign workers, and establish transportation safety standards. It will help ensure that the working conditions protect the dignity of and ensure respect for the workers.

This bill helps ensure that there will be a fair and judicious process that allows all to present their case. It enhances L&I's ability to administer the law. It only allows for one-year licenses (instead of one-year or two-year licenses). It also requires applicants to demonstrate compliance with laws and tax requirements. The Farm Labor Contractor Act needs to be

revised to make sure that workers are protected and that L&I can administer the laws in an effective manner. The L&I is willing to work with stakeholders on further changes and clarifications.

The Farm Labor Contractor Act was first enacted in 1955, and last underwent a major revision in 1985. It is a different world now. Last year the agency was caught flat-footed. It took way too much time to deal with Global Horizons. We need to ensure that there is a level playing field, and that domestic workers and H-2A workers are protected. Some farm labor contractors prefer H-2A workers because H-2A workers are vulnerable and easily exploited. They are fearful of retaliation. They do not have the freedom to articulate their complaints. Right now these companies are lining up to do business in Washington. We need to protect the workers who have been here before and those that will come in the future.

I am concerned about what is going to happen when more and more farm labor contractors use H-2A workers. Right now I can earn a decent living, but I do not know what will happen in five years when I am displaced by an H-2A worker.

I have worked in agriculture for 25 years. I went to work for Global Horizons last year. When I started it was okay, but then they began riding us and we could not do our jobs. They could just get rid of us and bring in Thai workers to do our jobs. What they said was not what the agreement said. What they said violated laws.

We need to make sure these problems do not recur. We need caps on recruitment fees. We need to make sure that farm labor contractors are not using recruiters who abused workers abroad. Out state can protect these workers. The experience with Global Horizons last year showed the deficiencies in the current law. Its license was revoked, not because it violated the law, but because it violated the terms of its settlement agreement.

Testimony Against: If there is a problem with the current law, we would look at it, but this approach will not get us anywhere. The L&I had all the tools it needed to deal with Global Horizons. The L&I revoked Global Horizons' license because the company violated the audit component of the settlement agreement.

Only six farmers in Washington use the H-2A program. There is a shortage of workers in Washington, and the H-2A program is our only means of addressing that shortage. Legitimate companies use the H-2A program for legitimate purposes. I have been using H-2A workers for 40 years without any problem. This bill will ruin what is left of the sheep herding industry.

We do not condone abuses of the program and we share concerns about the program. However, the bill goes so far that there are unintended consequences. Most farm labor contractors are farmers. They become farm labor contractors to hold their crews together. Most crews have been in Washington a long time.

We are concerned about the public disclosure provision because it singles out farmers. We are concerned about the anti-discrimination provision because it creates a rebuttable presumption. We do not want to see that in state law.

Persons Testifying: (In support) Representative Kenney, prime sponsor; Patrick Woods, Department of Labor and Industries; Erik Nicholson, United Farm Workers; Martin Rios; Hilberto Cantu; Rachel da Silva, Columbia Legal Services; and Jeff Johnson, Washington State Labor Council.

(Opposed) Dan Fazio, Washington State Farm Bureau; Max Fernandez; Chris Cheney, Washington Growers' League; and Kris Tefft, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.